

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)
)
Telecommunications Services)
For Individuals with Hearing and Speech) CC Docket No. 98-67
Disabilities)
_____)

COMMENTS OF CSD ON
PAYMENT FORMULA AND FUND SIZE ESTIMATE
INTERSTATE TRS FUND
FOR JULY 2004 THROUGH JUNE 2005

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TABLE OF CONTENTS

SUMMARY	iii
I. Introduction.....	1
II. VRS is a Much Needed Broadband Service.....	2
III. NECA’s Proposed Payment Formula is Based on a Flawed Ruling.....	6
A. The NECA Rate is based on an CGB Ruling that was Impermissibly Made without Notice and Comment from the Public.....	7
B. Use of a Rate of Return on Investment is Inappropriate as Applied to VRS.....	9
C. CGB has Never Provided Instruction on How to Determine the Rate of Return on VRS Investment.....	11
IV. Use of a Monthly Factor of 1.4% on the Average Minute Cost for VRS Violates Sound Business Principles.....	14
V. Costs Associated with Research and Development Should be Allowed..	15
VI. Conclusion.....	17

SUMMARY

Communication Service for the Deaf (CSD) opposes application of the proposed NECA rate for video relay services (VRS) because it jeopardizes functionally equivalent access to communication services and does not fairly or reasonably compensate VRS providers for their services. CSD urges the Commission to reject the proposed payment formula and to complete its pending rulemaking proceeding to arrive at a compensation methodology that complies with the American with Disabilities Act's (ADA's) mandate for functional equivalency and fairly reimburses providers in this highly competitive and volatile service industry.

At a time when the Commission is engaged in numerous proceedings to expand the deployment of broadband services to all Americans, the \$7.29 rate proposed by NECA threatens to curtail the extraordinary benefits that one broadband service – VRS – has provided to deaf and hard of hearing Americans who use sign language. By enabling conversations to take place in real time, complete with the nuances typically reserved for voice-to-voice conventional telephone services, VRS finally achieves functional equivalence to a far greater degree than traditional relay services ever could. Moreover, by relieving users of the need to type, the service has enabled new populations – especially young children and senior citizens – to finally be able to use relay services to communicate with friends and loved ones.

Through hundreds of comments sent to the FCC over the past ten months, consumers have shared their dismay over the severe consequences that reduced funding has already had on VRS as a result of the Consumer and Governmental Affairs Bureau's (CGB's) June 2003 Interim Rate Order. The shortened hours, higher blockage rates, and

long answer speeds now characteristic of VRS are reminiscent of the inferior relay services provided by private entities and the states back in the 1970s and 1980s. These substandard services would surely continue and even worsen under NECA's proposed rate, a rate that was rejected by NECA's own Advisory Committee as being unfair and inconsistent with the ADA's mandate for functional equivalency. The inadequate funding that is now characteristic of VRS is also preventing relay providers from having the flexibility to explore enhancements to VRS that will enable users to access emergency services, reach 900 numbers, and enjoy mobility afforded through wireless access.

The payment formula proposed by NECA appears to have been based on CGB's June Interim Rate Order, an Order that was flawed in many respects. As noted in prior Petitions for Reconsideration of that Order, by exchanging a prior methodology that relied on a fair mark up over expenses for a new payment methodology that uses a rate of return on investment without notice and comment to the general public, CGB acted in violation of both administrative law and its own delegated authority.

Moreover, in its June Order, CGB failed to take into account the fact that a rate of return on investment methodology is typically applied to capital intensive telephone companies operating in stable markets, not to competitive, labor intensive industries that are replete with financial risks, such as VRS. In addition, CGB adopted the new methodology without providing sufficient guidance on the data that NECA should use to determine the new compensation rate or the expenses that providers would be permitted to report in the determination of this rate. As a result, NECA acknowledges that it did not collect data on investment, and instead used a surrogate for working capital to

determine the proposed compensation rate. The problem with this approach is that it not only leaves providers in the dark as to what expenses are and are not permitted, it virtually strips any and all return on the VRS product, leaving providers with little or no incentive to pursue VRS in a precarious environment that involves considerable financial risks.

From both the provider and the consumer perspective, the proposed rate is unfair. CSD urges the Commission to complete its pending cost recovery rulemaking, refreshing the record as needed, to restore a rate that ensures the continued viability of and improvements to VRS, as required by the ADA's guarantees of functional equivalency.

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I. Introduction

Communication Service for the Deaf, Inc. (CSD) hereby submits comments in response to the proposed provider payment formula and compensation rate for video relay service (VRS) submitted by the National Exchange Carriers Administration to the Federal Communications Commission (FCC) on May 3, 2004. As a private, non-profit organization, CSD approaches VRS from a unique perspective. Through its relationship with Sprint, CSD serves as a provider of VRS throughout all fifty states and the United States territories. As an organization run by and for deaf consumers and a leader in the field of relay services since the 1980s, CSD regularly considers the impact of its actions – as well as the actions of the FCC – on deaf and hard of hearing consumers. From both of these perspectives – that of the provider and of the relay consumer – CSD joins NECA’s own Advisory Committee in opposing NECA’s proposed compensation rate and urges the FCC to consider carefully the impact that NECA’s proposed payment formula will have on the pursuit of functionally equivalent relay services.

II. VRS is a Much Needed Broadband Service

On more than one occasion, the Commission has noted the vital role that broadband services can play in the life and economy of our nation. In order to ensure that all Americans have access to advanced telecommunications capabilities, the FCC has conducted a number of inquiries designed to assess the extent to which these technologies are being deployed in a timely and reasonable fashion. In the most recent of these inquiries, conducted under Section 706 of the Communications Act, the FCC emphasized the influential role that these services are beginning to play in the field of employment: “[A]dvanced services have created new jobs, while enabling skilled employees to work more effectively in their current jobs. Advanced services have also created greater flexibility and opportunity in the workplace, particularly in the increased use of telecommuting by employees who remain connected to their jobs despite distance and other factors.”¹ In this same proceeding, the FCC also touted the “dramatic impact” that advanced broadband services can have with respect to educational opportunities and access to long distance telemedicine.²

In a somewhat related proceeding, the Commission is now exploring the role that the Commission itself should play in safeguarding the interests of consumers as these new broadband technologies proliferate.³ The Commission’s “IP-Enabled Services” proceeding has received considerable attention because of the speed with which both companies and consumers are swiftly replacing their traditional telephone networks with

¹ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, GN Dkt 04-54, FCC 04-55 at ¶ 2 (rel. March 17, 2004)

² *Id.* at ¶¶ 3,4.

³ *In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, WC Dkt No. 04-36, FCC 04-28 (rel. March 10, 2004).

IP-enabled services. Users of these new services are rapidly discovering that they can easily tailor the diverse functionalities that these services have to offer to meet their individual communication needs. As the FCC has stated, the Internet has “become one of the greatest drivers of consumer choice and benefit, technical innovation, and economic development in the United States in the last ten years.”⁴ Although interested in minimal regulation where possible, the Commission has been unambiguous in its desire to fulfill various social policy objectives, including access by people with disabilities, as our nation moves forward in the deployment of these Internet services.⁵

It is against this backdrop that the FCC needs to address the issues raised in the instant proceeding on VRS. Video relay services, approved by the Commission in March of 2000, have afforded people with hearing disabilities whose native language is American Sign Language (ASL) the opportunity to benefit from the extraordinary advantages that advanced broadband technologies have to offer.⁶ In fact, VRS is the *only* communication service that enables these individuals to communicate by telephone with other people in a manner that is functionally equivalent to the ability of individuals who do not have hearing disabilities, as required by Title IV of the Americans with Disabilities Act (ADA). VRS allows ASL and hearing individuals to have naturally-flowing, real time conversations with one another that mirror the speed of voice-to-voice conversations. Through these services, ASL users and hearing persons can fully appreciate the emotional content and conversational nuances that parties typically convey during conventional voice-to-voice phone conversations. This is in sharp contrast to the

⁴ *Id.* at ¶1

⁵ *Id.* at ¶¶5, 58-60.

⁶ *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking*, CC Dkt No. 98-67, FCC 00-56 (rel. March 6, 2000) (First Improved Services Order) at ¶22.

painfully slow and aloof exchange of text and voice that takes place during traditional text-to-voice relay services. Because each party to a traditional relay conversation must wait through long pauses to receive the other party's messages, the use of traditional relay services has often been discouraged and far too frequently rejected by employers and businesses who value their time in our fast-paced society. The continued reluctance to use traditional relay services and the inability of these services to emulate conventional voice conversations have prevented these services from fully achieving the ADA's goals of functional equivalency.

The ease of using VRS – both for the deaf person who signs and the hearing person who receives those signed messages and responds in voice – enables deaf and hard of hearing people to effectively use the telephone to conduct job searches, make appointments for interviews, arrange for references, and – once on the job – perform a plethora of job duties involving phone communications. In this regard, VRS already fulfills one of the Commission's goals, *i.e.*, the use of broadband technologies to provide greater flexibility and opportunity for Americans in the workplace. In a country where the percentages of deaf individuals who are unemployed and under-employed far exceeds the norm for the general population, this alone is cause for the Commission to adopt policies that promote VRS.

Yet the benefits of VRS do not stop at the workplace. For the first time in our nation's history, deaf children who are unable to type can call their friends and loved ones to share the events that define their lives. For the first time, senior citizens whose hands are too arthritic to put words to text or whose cognitive abilities hinder their ability to type can break their loneliness by calling their children or grandchildren for support

and assistance. For the first time, people with hearing disabilities can readily access interactive telephone response systems and recorded messages used by transportation authorities, banks, governmental offices, and a multitude of other industries that have come to rely exclusively on these interactive systems for their telephone communications. And for the first time, deaf business associates can conduct conference calls without the unnatural pauses and delays characteristic of traditional text relay calls.

It is fitting that as we approach the fifteenth year of the anniversary of the ADA, we have in place telephone relay services that finally can achieve the functional equivalency that was envisioned by the ADA's legislative drafters. But actions taken by the Commission over the past ten months, CSD fears, threaten to put the exceptional benefits that VRS has to offer in jeopardy. The rate for VRS as proposed by NECA under the direction of the Consumer and Government Affairs Bureau (CGB) is inadequate to allow VRS to continue as a viable and effective communications service. As is shown below, the payment formula upon which the rate is founded is seriously flawed in several respects.

Over the past ten months, during meetings with providers, the FCC staff has made frequent references to the enormous growth in VRS use, notwithstanding the change in the interim VRS compensation scheme. CSD submits that this growth has occurred because populations previously unable to communicate in their native language by telephone have now discovered the ability to do so. In fact, if one looks at historical trends, one will discover that similarly astronomical growth took place in the 1980s with the earliest of state-run traditional relay services. Previously unable to use the telephone at all, in the 1980s, deaf and hard of hearing consumers jumped at the opportunity to

finally communicate with friends and relatives through these state operations, despite the fact that inadequate funding for most of these services imposed limits on the number, time and even content of calls that could be relayed. But then, as now, once the initial excitement of being able to taste the benefits of telephone access wore off, consumers realized that the services they were being offered were far poorer than those being afforded the general public through the public switched network. Then, as now, consumers decided to stand up for their rights to obtain a service that truly met their needs. Specifically, consumers turned to Congress and successfully secured the ADA's mandate for future relay services to be functionally equivalent to conventional telephone services.

In 1991, the FCC complied with the ADA's functional equivalency mandate by establishing minimum standards that have made traditional TRS as successful as it can be within its own limitations. Now we call upon the FCC to guarantee a fair compensation scheme that can enable VRS – a service far more capable of achieving functional equivalency – to finally accomplish what the drafters of the ADA so desired.

III. NECA's Proposed Payment Formula is Based on a Flawed Ruling

On May 3, 2004, NECA submitted to the FCC a new payment formula that proposes to reduce the VRS rate to \$7.29.⁷ NECA has explained that it relied upon the Interim Rate Order issued by CGB in June 2003 to reach its proposed compensation rate.⁸ Reliance on this Interim Order poses a number of problems, as discussed below.

⁷ Annual Submission of TRS Payment and Revenue Requirements for June 2004-June 2005 (May 3, 2004) ("NECA Payment Formula").

⁸ *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Dkt No. 98-67, DA 03-2111 (rel. June 30, 2003) ("Interim Rate Order").

A. The NECA Rate is based on a CGB Ruling that was Impermissibly Made Without Notice and Comment from the Public

On December 21, 2001, the FCC released a Memorandum Opinion and Order and Further Notice of Proposed Rulemaking on recommended TRS cost recovery guidelines.⁹ At that time, the FCC directed NECA to temporarily employ a VRS cost recovery rate using the same average per minute compensation methodology that was used for traditional TRS “to ensure that providers are able to recover their fair costs related to providing VRS.”¹⁰ The Commission declined to adopt this methodology on a permanent basis, choosing instead to gather additional information before deciding on the most appropriate VRS cost recovery mechanism. Among other things, the Commission explained that it was “not convinced that this methodology will provide adequate incentives to carriers to provide video relay services.”¹¹ The Commission then asked for input on both the compensation method best suited to VRS and the type of data that needed to be collected from VRS providers to calculate the compensation rate.

Rather than finalize this 2001 proceeding, on June 30, 2003, the CGB ordered, with less than twenty-four hours notice, the drastic reduction of the compensation rate for VRS from the \$14.023 per minute rate proposed by NECA to an interim per minute rate of \$7.75. Providers, previously reliant on a fair compensation scheme, were astonished to learn that they had less than a day to adjust their services to the new compensation scheme. Prior to the June 30th Order, it was customary for NECA, with the FCC’s approval, to reimburse TRS providers based on a fair mark up over relay expenses.

⁹ *In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guidelines, Request by Hamilton Telephone Company for Clarification and Temporary Waivers, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Dkt No. 98-67, FCC 01-371(rel December 21, 2001) (“2001 Memorandum Opinion”)

¹⁰ *Id.* at ¶34.

¹¹ *Id.* at ¶23

Providers had naturally come to rely upon these expected levels of returns for the development of their business plans throughout the eleven years during which NECA served as the TRS Fund Administrator. But in place of allowing a fair return over expenses, CGB's Interim Rate Order adopted a brand new methodology that applied an 11.25% rate of return on what CGB assumed to be each provider's investment in the provision of VRS. Although in taking this action, CGB departed significantly from prior FCC practice, it neither first published proposals to gather public comment on the appropriateness of this new compensation method, nor provided any instructions for the uniform application of the new compensation methodology.

Rather, in violation of the Administrative Procedure Act's protections for notice and comment, and with little justification for its actions, CGB impermissibly and arbitrarily replaced the FCC's approved methodology with a new methodology of its own choosing.¹² Moreover, by acting on its own, without Commission level approval in deciding novel legal and policy questions, CGB exceeded its delegated authority.¹³ It is no exaggeration to say that CGB's actions occurred within a vacuum, without concern for the impact that those actions would have on consumers or providers, and with little or no opportunity for the input of the full Commission.

¹² The Administrative Procedure Act's guarantees of notice and comment rulemakings can be found at 5 U.S.C. §552. CGB justified its decision to adopt the new rate largely on a comparison between costs associated with VRS and those associated with VRI. CSD and HOVRS have already pointed out in detail why a comparison between the rates of these two services is entirely inappropriate. See CSD Petition for Reconsideration (filed July 30, 2003) at 9-12; HOVRS Petition for Reconsideration (filed July 30, 2003) at 7. The June Interim Rate Order also stated that the new rate was based on "various exclusions, most significantly in the areas of profit calculations, tax allowances, and labor costs." Interim Rate Order at ¶37. However, in that Order, CGB failed to provide any explanation for its decision to eliminate the reasonable profit-over-costs analyses that had been routinely applied to relay service compensation. With respect to the Bureau's disallowance of labor costs based on interpreter occupancy, CSD has already explained why the Interim Rate Order cannot withstand the scrutiny of professional interpreting standards. See CSD Petition at 15-16. CSD hereby requests that its full Petition for Reconsideration of the FCC's Interim Rate Order be incorporated by reference into this document.

¹³ 47 CFR §0.361(c)

The consequences of the FCC's actions, as predicted by various providers, were severe. VRS went from a service that was available around the clock with answer speeds approaching or meeting those for traditional TRS to a service that is now available only on limited days, at limited times, and, for some providers, with answer speeds that fall far below the functional equivalence standard anticipated by Congress. Although prior to the rate change, VRS users had been able to take full advantage of broadband technologies to enjoy a functionally equivalent telephone service, they are now forced to use a service reminiscent of the substandard text-to-voice relay services that existed back in the early 1980s, *i.e.*, a service that forced its users to wait lengthy periods to make a single call, imposed blockage rates that far exceeded blockage rates typically experienced by voice users, and offered hours of use that dwarfed those available through the regular telephone network. It was the inferior nature of these services that caused consumers to go to Congress to secure Title IV of the ADA's promises of functional equivalency in the first place. Having secured those Congressional protections of equal access, consumers should not have to now struggle to again secure what is already guaranteed by law.

B. Use of a Rate of Return on Investment is Inappropriate as Applied to VRS

The second problem with the proposed payment formula is that it is premised on a return on capital investment. As the June Interim Rate Order notes, in the past, the FCC has applied the rate of return on investment methodology to established, capital intensive telephone companies.¹⁴ Carriers subject to this methodology are in an industry that is relatively stable. Moreover, rate of return carriers are permitted to file tariffs seeking the adjustment of their rates during a given period if necessary. By contrast, VRS is a labor

¹⁴ Interim Rate Order at ¶35 n. 94, citing to *Prescribing the Authorized Unitary Rate of Return for Interstate Services of Local Exchange Carriers*, Notice Initiating a Prescription Proceeding and Notice of Proposed Rulemaking, CC Dkt No. 98-166, FCC 98-222, 13 FCC Rcd 20561 at n.2 (1998).

intensive industry subject to considerable risks. Unlike a common carrier with significant facilities, CSD must rely on its receivables as the primary source of collateral for its debt borrowings. This in turn limits its ability to attract long term debt capital. Stated otherwise, CSD does not have a large investment in the communications infrastructure to use as debt capital to grow its business. As a result, CSD will never approach the debt and equity capitalization ratios used by the FCC in prescribing the 11.25% rate of return applied to certain local exchange carriers.

The methodology relied upon by CGB's Interim Rate Order is inappropriate because it also fails to take into account the highly competitive nature of VRS and the many uncertainties still associated with this service. As an optional service and one that the FCC has made clear will only be supported by the Interstate TRS Fund on a temporary basis, the future of VRS compensation remains largely up in the air. Specifically, it is not clear whether future VRS funding will come from federal or state sources, whether VRS will remain optional or become mandatory, or whether VRS rates in the future will depend on state-issued RFPs or NECA-based cost submissions. The interim rate set by the June Order, as well as the rate now proposed by NECA, offer excellent examples of how the financial risks associated with VRS come into play, and how dramatic reductions in compensation can prevent a provider from recovering its costs. In addition, the expiration dates for various VRS waivers – for example, those pertaining to around-the-clock service and average speed of answer – will have a significant impact on vendor planning; continued uncertainty about these waivers leave providers with little to go on in their attempts to plan costs for future compliance. Because VRS funding is so volatile, and because VRS is a labor, rather than capital-

intensive service, restoration of the prior compensation model based on a return on projected expenses is far more reasonable and appropriate than the interim methodology now being applied.

C. CGB has Never Provided Instruction on How to Determine the Rate of Return on VRS Investment.

A third problem with the NECA proposal is that it is based on CGB's decision to apply a rate of return on what CGB determined, on its own – without any input from VRS providers – to be the capital investment for VRS. CGB has never provided NECA with sufficient guidance as to what investment base NECA should use when making its rate of return calculation. CSD agrees with Sprint that if providers are to be subject to a rate of return standard, the Commission needs to carefully examine, through a rulemaking proceeding, the data that would go into a rate of return calculation for a competitive service that is a labor and expense-intensive, as compared to one that is typically applied to local exchange carriers. In addition, the rate of return decided upon should be one that acknowledges the various risks inherent to VRS enterprises.

At a minimum, if the FCC insists upon using a rate of return on investment, it should direct NECA to gather all of the costs needed to appropriately calculate the investment base that are contained in Part 32 of the FCC's rules, including:

- net book capital investment in telecommunications plants - 47 CFR 65.820(a)
- material and supplies 47 CFR 65.820(b)
- non-current assets 47 CFR 65.820(c)
- average amount of investor-supplied (working) capital needed to provide funds for a carrier's day to day interstate operations 47 CFR 65.820(d)

In its proposed payment formula, NECA acknowledges that it “does not collect data on investment” and therefore does not have the information necessary to make a determination of the compensation rate based on a rate of return on investment. Instead, NECA explains, it has chosen to use a surrogate for working capital to arrive at its proposed rate of return.¹⁵

The problem with this approach is that it leaves providers in the dark about just what NECA did use to arrive at its proposed rate. NECA’s submission to the FCC notes that it had concerns about a variety of expenses submitted, including the amount of research and development in engineering expenses, the calculation of occupancy and utilization percentages for VRS interpreters, corporate overheads, and the calculation of taxes and profit margin. NECA also notes that it “made adjustments to certain management salaries and benefits and marketing expenses that appeared to be outside the norm and not directly attributable to the provision of VRS.”¹⁶ However, NECA does little to explain why these expenses were disallowed for certain providers, leaving all providers – even those that may not have had many expenses disallowed – with insufficient information on which to base future VRS expenses.¹⁷

Of course, NECA may not be faulted for taking such an approach, as it was simply was following the approach adopted by CGB in its June Interim Rate Order. For example, CGB’s Order stated, that in part, it reduced the 2003-04 rate because it concluded that VRS interpreter occupancy levels were too high. How CGB arrived at

¹⁵ NECA Payment Formula at 7.

¹⁶ *Id.* at 15-16.

¹⁷ Footnote 34 of the NECA submission indicates that NECA may have intended to add additional information regarding its disallowances. That footnote, inadvertently left in, states, “I think we need to provide a little more detail here regarding why we felt these [expenses] were exorbitant.” Having failed to add this information, providers are left without sufficient information as to why certain expenses were permitted and others disallowed.

this conclusion remains unexplained. Indeed, comments submitted by the Registry of Interpreters for the Deaf (RID), a national professional association of over 10,000 interpreters, have pointed out that the high occupancy rates required of VRS interpreters after the rate was dropped in June endangered the health and well-being of interpreters, who became more prone to contract cumulative motion injuries as a result of extended and prolonged VRS shifts.¹⁸ The FCC has never explored the reasonableness of the occupancy standard it used for its Interim Rate Order with interpreting agencies, and the extent to which this factor was now considered by NECA in the determination of the compensation rate remains unknown. In the interest of protecting the health and safety of its employees, CSD must apply professionally acceptable occupancy rates; yet at present, it and other VRS providers remain in the extremely uncomfortable position of not knowing whether they will be fully reimbursed for these expenses.

Similarly, NECA notes in its filing that in response to the June 30th order, NECA required providers to submit detailed explanations of their expenses with respect to “salaries and benefits, engineering, other corporate overheads, depreciation, taxes, profit margin, outreach and advertising.”¹⁹ But what is not known is the extent to which expenses in each of these categories was permitted in the proposed compensation rate or the extent to which they will be permitted in future rates. Without any guidance whatsoever, providers are left on their own to take guesses as to what will be allowed or disallowed as compensation for the services they provide. This leaves CSD and other

¹⁸ RID’s comments went on to explain that the interim rate required increased physical and mental demands and forced vendors to higher lower skilled, lower paid interpreters that reduced VRS quality, thereby increasing the risks of interpreter misinterpretation. Comments submitted by Clay Nettles, Executive Director of RID (Aug 26, 2003).

¹⁹ NECA Payment Formula at 4. In this regard, NECA makes the same error as CGB. It has adopted a rate of return methodology without asking the providers to submit their capital costs to which such rate would then be applied.

vendors ill-prepared to effectively prepare for the future provision of services in this highly competitive industry.

IV. Use of a Monthly Factor of 1.4% on the Average Minute Cost for VRS Violates Sound Business Principles

In its filing, NECA explained that it applied a monthly factor of 1.4% to the average cost per minute of VRS service as the surrogate to arrive at the proposed compensation rate of \$7.29 per minute. The 1.4% mark-up to which NECA refers appears to be the equivalent of a 1.4% interest payment intended to compensate each provider for the cost of carrying charges during the thirty day period between the time when the provider incurs its costs and the time that NECA reimburses that provider for those costs.

In a complete reversal of prior practice, this new payment formula entirely strips any profit or return from the VRS product, and instead allows reimbursement to the provider solely for the one element of capital cost that the provider incurs. Such action appears to be premised on the statement in the June Interim Rate Order that allowing profits based on “a percentage of total estimated VRS costs . . . is neither described nor authorized under [the Commission’s] rules.”²⁰ However, it remains unclear why this statement was made in the first place, as the June Order cites to no rule, statute, or other authority for its declaration.

On the contrary, it is customary for the federal government to award cost plus contracts, to allow entities a profit – or return – for the services that they provide. This is to encourage “financial rewards sufficient to stimulate efficient contract performance

²⁰ Interim Rate Order at ¶35.

[and] and attract the best capabilities of qualified large and small business concerns. . .”²¹

It is unrealistic for the Commission to expect VRS providers to continue providing services at a financial loss, given the considerable risks inherent in this industry. Non-profit vendors, in particular, cannot be expected to rely on such a precarious funding mechanism. As a non-common carrier service, in a highly competitive industry, VRS should be subject to a cost-plus methodology to ensure the viability of this service.

V. Costs Associated with Research and Development Should be Allowed

When the Commission first authorized funding for VRS, it decided to do so from the Interstate TRS fund in order “to encourage this new technology” and “speed its development.”²² The FCC’s action was in keeping with mandates from Congress directing the Commission to promulgate regulations that encourage “the use of existing technology and do not discourage or impair the development of improved technology.”²³ This action was also in conformance with one of CGB’s own functions, as delegated by the full Commission, to propose policies that “support the Commission’s goal of increasing accessibility of communications and technologies for persons with disabilities.”²⁴ Notwithstanding these directives, NECA now reports that research and development expenses were removed from the calculation of its 2004-05 VRS compensation rate.²⁵ Although the Interim Rate Order does not directly address exclusion of these costs, NECA appears to be acting under the CGB’s direction in disallowing these expenses.

²¹ 48 C.F.R. §15-404-4(a)(2)

²² First Improved Services Order at ¶24..

²³ 47 U.S.C. §225(d)(2).

²⁴ 47 C.F.R. §0.141(f).

²⁵ NECA Payment Formula at 16.

Though once an add-on service available to a limited number of users at select public stations, VRS has become the primary mode of telephone communication for large populations of users. But this did not happen overnight. During its earliest years, it was the support given to research and development that enabled VRS providers to develop distribution networks that enable faster answer speeds, improvements in picture quality, end user functionality, and customer friendly interfaces. Increased reliance on VRS for everyday telecommunications needs means that consumers will soon demand full access to even more telecommunications service features, including emergency access and access to 900 calls, both currently waived under the FCC's rules. Indeed, in its IP-Enabled proceeding, the FCC has made clear the Commission's interest in providing 911 access to individuals using broadband services. Similarly, the need for mobility in our society means that consumers will soon be demanding video relay access over wireless services.

CSD has an interest in ultimately offering these and other improved services to VRS users. However, under the present funding scheme, there is virtually no flexibility nor any incentive to research and invest in new technologies that can provide these service features to VRS users. Moreover, the failure to allow reimbursement for R & D expenses puts CSD and other providers in a precarious position. Should, at some point, the FCC reinstate the minimum standards that require access to emergency, 900, and other services, CSD will not be in a position to comply with those standards, having been unable to fund the research needed to find the necessary technical solutions.

Continued exploration of technologies that can meet consumer demands for clear, crisp, and comprehensive video communications requires ongoing development, trials,

and testing. In the interest of responding to the considerable interest that consumers have shown in VRS, CSD has made every effort to provide high quality service that exceeds the FCC's current VRS requirements. But the revised compensation scheme – apparently based on the June Interim Rate Order – seriously threatens the ability of CSD and others to continue supporting efforts to develop improved technologies that can enhance VRS.

VI. Conclusion

Since March of 2000, VRS has undergone considerable change, both from a provider's and from a consumer's perspective. Once a service that was accessed through public stations provided by one provider only, VRS is now a vibrant and competitive service that is available through various providers from one's home or office. Improved technologies and increased access to broadband services, coupled with the introduction of new TV-based broadband appliances, have brought this service into the mainstream of the deaf and hard of hearing communities. But the leaps that VRS have made over the past four years shy in comparison to the depths to which this service has fallen.

Shortened hours, higher blockage rates, and long answer speeds now characterize VRS offered by many providers. By proposing to decrease the compensation rate even further, NECA's payment formula threatens entirely the continued viability of this service.

Since issuing the June Interim Rate Order, the Commission has heard from hundreds of deaf and hard of hearing consumers who have expressed concerns about inadequate VRS funding. Even interpreters have come forward to report the dramatic strain that the reduced rates have had on the interpreting industry. All have agreed that the new rate harms the public interest by impeding the ability of VRS providers to offer functionally equivalent VRS.

In the past, the FCC has suggested that the existence of the various VRS waivers justifies a lower VRS rate. CSD respectfully disagrees and urges the Commission, in the interest of achieving functional equivalency, to establish a fair compensation that will support elimination of the answer speed waiver, and ultimately the elimination of the other waivers, as applicable. To this end, we urge the FCC to finalize the rulemaking proceeding already pending by exploring and approving an appropriate and clearly defined compensation methodology for VRS. CSD recognizes that given the changes in VRS that have occurred since the Commission instituted that rulemaking, it may be necessary to ask interested parties to refresh the record. The methodology ultimately chosen must take into account a reasonable return to encourage both the provision of and improvements to VRS, and one that relies on uniform standards – including a uniform answer speed that approximates traditional TRS – by which all providers can fairly determine their VRS expenses.

Respectfully submitted,

/s/

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